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Legal Aid

MUCH of the information contained in the Sixth Report of The Law Society on the Legal Aid Scheme (H.M. Stationery Office, 3s.) has already been published in one form or another and the report is chiefly of interest for the Advisory Committee's comments. Last year the Select Committee on Estimates made an exhaustive examination of the scheme and as a result the LORD CHANCELLOR caused investigations to be made into the causes of the decline in the percentage of successes in assisted cases in the Queen's Bench Division and in matrimonial cases. The committee now report on these investigations and find several possible causes. First, there was at the start of the scheme an accumulation of straightforward cases which have been disposed of. Secondly, the rise in wages and contributions has apparently meant that litigants are tending to finance the simple cases themselves and seeking the protection of the scheme only when the going is tough. Thirdly, the committee think that changes in the method of compiling statistics may give a misleading picture. They find that the number of defended matrimonial cases has steadily increased and that in the Queen's Bench Division " there is much greater emphasis on defence than there was formerly." They do not venture any opinion about the reason for the increased aggressiveness of defendants and the evidence is not strong enough for the committee to reach any conclusions. They reiterate their view that there is no cause for alarm. A more disturbing revelation in the report is that administrative costs are increasing while cases are decreasing. The draft statement of accounts for the year ended 31st March, 1956, shows an increase of nearly £65,000 in recurring administrative charges and a small decline in solicitors' charges and counsels' fees. During that year the scheme cost £472,787 (recurring and non-recurring) in administration and £1,441,620 in payments to solicitors and counsel. As usual, the report contains many points of interest with which we will deal fully in the next week or two.

Succession by Foreign Adoption

SINCE the revision as from 1950 of the English law of adoption so as to make the incorporation of the adopted child into the family of the adopter effective as regards rights of property, there have arisen from time to time questions as to the scope of the new provisions. It is now settled that the operation of the 1950 Act itself is confined to adoption orders made in England, Scotland or Northern Ireland. But this does not mean, according to the opinion of HARMAN, J., in *Re Marshall, deceased* [1957] 2 W.L.R. 439; *ante*, p. 229,

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that a child adopted elsewhere can never take under the true construction of a gift to children or issue, even apart, we may add, from special circumstances such as influenced the construction of the disposition in *Re Gilpin* [1954] Ch. 1. *Re Marshall* is one of those cases which are more interesting (except to the parties) for what was not decided than for the terms of the actual decision. Holding that the date crucial in the case before him was that of the testator's death in 1945, before the adoption law of British Columbia had been so amended as to bring a certain relative by adoption into the class of issue of the adoptive parent for the purpose of inheritance, his lordship decided against his entitlement to share under the gift. Then, proceeding to consider the situation on the hypothesis that the relevant date was after the reform of the British Columbian system (as it would have been if the date of death of the tenant for life had been determinative), the learned judge prayed in aid the well-known line of cases on legitimation culminating in *Re Luck's Settlement Trusts* [1940] Ch. 864, saying, by way of explanation, that adoption is a kind of legitimation. The effect of these cases is, shortly, that a child born of parents domiciled in a country by the laws of which he becomes legitimated may take under an English bequest in favour of children or issue. As extended to the case of adoption this principle lets in persons who and whose adoptive parents are domiciled at the time of adoption in a country in which the adoption law contains at the relevant time a provision enabling them to succeed on intestacy or to take under a disposition, as the case may be. It involves dissent from the decision in *Re Wilby* [1956] P. 174, where, as Harman, J., points out, *Re Luck's Settlement Trusts* was not cited.

Solicitors and Town Planning Experts

IT has been agreed between representatives of the Council of The Law Society and representatives of the Town Planning Institute, according to a statement in the March issue of the *Law Society's Gazette*, that solicitors should persuade their clients that in town planning cases their best interests would be served if a town planning expert were brought in to assist, and that town planning experts should persuade their clients to employ legal experts to assist them. Both these advantages are enjoyed by the authorities whose decisions are challenged, and clients should not find it hard to appreciate how gravely prejudiced they will be if deprived of either. It was also agreed that the precise boundary between the town planning expert and the lawyer is not easily drawn, but should be worked out by both bodies in harmony. The meeting also felt that young solicitors should consider taking the Institute's Examinations with a view to their becoming legal associate members or legal members of the Town Planning Institute. Ambitious young solicitors, please note this.

Mind and Body

THE Winter, 1956–57, issue of *Rehabilitation*, which is the journal of the British Council for Rehabilitation, consists of a symposium on the effects of impending litigation on the recovery of injured persons. The problem is well known to solicitors who deal with claims for damages for personal injuries and is summed up by one contributor, Mr. C. J. S. O'MALLEY, as follows: "His legal advisers state that it is impossible to settle until clinical finality has been reached. His medical advisers are of the opinion that full functional finality can never be reached until a just and appropriate settlement of his compensation problems has been obtained." Someone has to break the vicious circle. Mr. O'Malley proposes that the issue of liability should be settled, if necessary in court, in advance of the issue of damages. We can see no objection to this proposal, which, apart from removing at least part of the injured person's anxiety, would also enable cases to be heard while memories are still fresh. This issue is of real interest to those engaged in this kind of work and may be obtained from the British Council for Rehabilitation, Tavistock House (South), Tavistock Square, London, W.C.1, price 2s. 9d. including postage.

Registered Land: Evidence of Title

A PRACTICE note in the *Law Society's Gazette* for March states that some misapprehension appears to exist as to the method of furnishing evidence of title to a purchaser of registered land. There is no obligation on the solicitor, the note states, to do more than is required by s. 110 of the Land Registration Act, 1925, namely, to supply an authority to inspect the register and, if required, a copy of the subsisting entries, plan and documents mentioned in the section. The Council recommend that an office copy of the entries in the register, of the filed plan, and of any documents or parts thereof noted in the register should in all cases be furnished as a matter of course by the vendor's solicitor (at the vendor's expense) to the purchaser's solicitor on exchange of contracts.

The Trumpet shall Sound

THOSE, and they are many, who think that the legal profession should do more advertising could follow the example of the Public Relations Committees of the Massachusetts, Boston and New Hampshire Bar Associations and buy time on commercial television. These Associations sponsor panel programmes entitled "New England Town Meeting of the Air," and the subjects being discussed during the first five months of 1957 include "Should we allow TV coverage of trials?", "What can be done to speed up justice?", "What are a lawyer's duties to his client?" and "What is the basis of a professional man's fee?". We trust that The Law Society and the Bar Council will not lag behind and we look forward to the emergence of electrifying new TV personalities.

The Solicitors' Journal

As most readers will be aware, almost all legal periodicals have had to increase prices and subscription rates in the past few months and the proprietors of the JOURNAL now regret that they must also do so. It is probably unnecessary to catalogue the numerous increased costs since the present rates were fixed in April, 1951, but in the last year alone such major items as postage, printing costs and paper prices have all moved upwards. In addition, the complexity of modern life has led to a continuous increase in the amount of editorial material and in six years the number of pages has risen by 15 per cent. We feel sure our readers will appreciate the efforts that we have made to delay raising subscription rates. This has only been made possible by the steady increase in the number of subscribers. From 1st April, however, new rates will become payable as and when subscriptions fall due for renewal. Thereafter, the annual rate will be 90s. inclusive (overseas, 100s.) and single copies will be 1s. 9d., postage extra.

THE OCCUPIERS' LIABILITY BILL—I

INTRODUCTION

I DON'T know whether lawyers are more pigeon-hole minded than others, but I suspect that they are and that their calling makes them so. I don't mean real pigeon-holes, as found in all the best Dickensian-type offices (and many modern ones, too, no doubt). I mean the type of mind that delights in sorting out problems into categories, pointing out the distinction between one set of facts and another, a process that depends largely for its validity on the ability to assess what facts are material.

In some such way the concept of the differences between various types of visitors entering on to premises arose, receiving its hallmark in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274. Were the distinctions between trespassers, licensees and invitees valid? Did they represent real differences arising from matters that were, in principle, material? Lord Atkin thought they did and said so in *Coleshill* v. *Manchester Corporation* [1928] 1 K.B. 776, at p. 791. More than one person has criticised this view, claiming that the law relating to persons entering on to property is "only a special sub-head of the general doctrine of negligence"—particularly Lord Wright. But is there any dichotomy here? Even if it is only a branch of negligence, shall we not still get categorisation arising from valid distinctions between differing sets of facts?

It will be recalled that the Law Reform Committee in its third report published at the end of 1954 (Cmd. 9305) recommended that the distinction between licensees and invitees should be abolished and in their places there should be a common duty to take reasonable care in respect of visitors. Before considering what this means, and how it is provided for in the new Bill, it is worthy of recall that the courts have already claimed to have reached some such position. The main points of distinction between the duty of the licensor compared with that of the invitor were that the licensor was liable for concealed dangers, whereas the invitor was liable for unusual dangers (a distinction often hard to draw); the licensor was liable for those of which he had actual knowledge, whereas the invitor was liable not only for those of which he had actual knowledge, but also for those of which he ought to have known; and the need for a common interest between invitor/invitee which was not necessary between licensor/licensee. But difficulty arose in dealing with "actual knowledge" as might have been guessed where the test is expressed in subjective terms: the court cannot get at actual knowledge, it can only get at imputed actual knowledge as distinct from imputed imputed knowledge. Moreover, the term "ought to have known" is a little ambiguous because it does not make clear whether what is meant is "ought to have known of the facts" or whether it means "ought to have appreciated the dangerous character of known facts." The latter has been applied to licensors, e.g., in *Baker* v. *Bethnal Green Council* [1945] 1 All E.R. 135, at p. 140, and in *Pearson* v. *Lambeth Borough Council* [1950] 2 K.B. 353 it was held that licensors were liable for dangers of which they "ought to have known" in the sense that they ought to have anticipated from earlier facts and events pointing to the possibility of future occasions of danger.

By these and other decisions—notably *Hawkins* v. *Coulsdon and Purley U.D.C.* [1954] 1 Q.B. 319—a position has been reached where the distinction between licensees and invitees has apparently melted away to vanishing point, and indeed Denning, L.J., in the recent decision of *Slater* v. *Clay Cross Co., Ltd.* [1956] 3 W.L.R. 232, asserts that the distinction has gone.

The Occupiers' Liability Bill (which had its second reading in the Commons on 6th March), following the recommendations of the Committee, provides that an occupier of premises will owe the *same* duty, called the "common duty of care," to *all* his visitors (cl. 2 (1)). There is an exception to allow him to modify the duty by agreement or otherwise where he is free to make such agreement. The common duty of care is expressed in the now well known and generally accepted form as a duty "to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there" (cl. 2 (2)). This is more than just a duty to warn (which under the existing law could be sufficient in the case of licensees, but not, on the better opinion, in the case of invitees), but less than a duty "to make the *premises* reasonably safe": it is a duty to see that the *visitor* is reasonably safe.

Another very important aspect of the law relating to visitors which has recently been developed to a prominent position, but which may be traced at least as far back as *Gallagher* v. *Humphrey* (1862), 6 L.T. (N.S.) 684, is the simple application of negligence where anything is done on the land which is a breach of the normal duty of care between two persons irrespective of any relationship arising from one being an occupier of land and another a visitor. This point was given much prominence recently in *Dunster* v. *Abbott* [1953] 2 All E.R. 1572, where a commercial traveller fell into a ditch as he was departing at night from an unsuccessful canvass of the occupier of the premises; his fall was due to the fact that the occupier switched off a light too soon and the traveller had no torch. Denning, L.J., said, incidentally, that a canvasser who comes to your premises without your consent is a trespasser; once he has your consent he is a licensee, and not until you do business with him is he an invitee. But these distinctions were not the material points in the case because the real cause of the fall was *an act* of the occupier and not the static condition of the premises. The action failed as it was held that the occupier's act was not negligent in the circumstances. This view of the importance of negligence as applied to activities was affirmed in the decision last year (also of the Court of Appeal) of *Slater* v. *Clay Cross Co., Ltd., supra.*

The new Bill recognises this point by providing (cl. s. 1 (1)) that the common duty of care shall regulate the duty which an occupier owes to his visitors not only in respect of the state of the premises but also in respect of things done or omitted.

But although this "common duty of care" applies both to persons who at common law would be invitees or licensees, and to activities on the premises, it would be quite wrong to assume that all categories have been abolished by the Bill: on the contrary, they have been increased, as we shall see in the next article.

L. W. M.

Mr. WILLIAM ARTHUR FEARNLEY-WHITTINGSTALL, Q.C., has been appointed Recorder of the City of Leicester.

Mr. VICTOR GEOFFREY PARKER, solicitor, of Stratford on Avon, has been appointed Resident Magistrate of Lusaka, Northern Rhodesia.

PROOF OF LARCENY IN RECEIVING CASES

To bring the crime of receiving home to the accused, the prosecution have to prove that the goods in question were stolen, that they have since come into his possession, and that at the time they came into his possession not only were they still legally "stolen," but also he knew they were stolen (see *R.* v. *Villensky* [1892] 2 Q.B. 597).

Guilty knowledge

Guilty knowledge can only be proved indirectly, and such proof is facilitated by the doctrine of recent possession. According to it, when stolen property finds its way into the possession of the accused comparatively soon after the theft (*R.* v. *Adams* (1829), 3 C. & P. 600; *R.* v. *Cooper* (1852), 3 C. & K. 318; *R.* v. *Livock* (1914), 10 Cr. App. R. 264; *R.* v. *Marcus* (1923), 17 Cr. App. R. 191), and he fails to give a reasonable explanation of how he came by it, the jury may infer guilty knowledge (*R.* v. *Schama and Abramovitch* (1914), 11 Cr. App. R. 45; *R.* v. *Aves* [1950] 2 All E.R. 330).

Should the accused, however, offer some explanation—either to the police, on oath, or unsworn from the dock—he would be entitled to have it considered on its merits, together with the other facts of the case, in exactly the same way as any defendant's explanation would be examined in every other kind of crime. So that if the jury find that his story is consistent with innocence and believe it to be true—or even think it a possible one, though they are not convinced of its truth—he must be acquitted; because in the former case they would be convinced of his innocence, while in the latter case they would doubt his guilt (*R.* v. *Garth* (1949), 33 Cr. App. R. 100). In order to succeed the prosecution must disprove a reasonable explanation given by the accused (*R.* v. *Crowhurst* (1844), 1 C. & K. 370).

Proof of larceny

Larceny, on the other hand, is capable of proof by direct evidence, and such evidence is available in the vast majority of cases. Yet the law does not require direct evidence of larceny. Why it should have been thought that it did it is difficult to imagine; at any rate, circumstantial evidence will do equally well. As long ago as 1853, in the course of the consideration of *R.* v. *Burton* (1854), Dears. C. C. 282, at p. 284) by the Court of Crown Cases Reserved, Maule, J., said: "If a man go into the London Docks sober, without means of getting drunk, and come out of one of the cellars very drunk, wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed." To quote Cockburn, C.J., in connection with another theft which was proved by circumstantial evidence: "Is there any jury that would not convict in such a case?" (*R.* v. *Mockford* (1868), 11 Cox, C. C. 16, at p. 18). Indeed, it was decided as far back as 1864 that recent possession is evidence either of stealing or receiving, according to the other circumstances of the case (*R.* v. *Langmead* (1864), L. & C. 427).

The two to be considered separately

It is possible, therefore, that where the owner of the goods in question cannot be traced, the same circumstances which point to guilty knowledge also point to the fact that the goods were stolen. But the two matters, though they may be interlaced, must be investigated separately; clearly, the question of guilty knowledge cannot arise unless and until theft is established. First, the jury or the magistrates must find that the goods were stolen—and recently stolen; only when they are satisfied of that, and not before, ought they to proceed to their next task, that is to say, to consider whether—at the time when he received them—the accused knew that they were stolen. Therefore, at the close of the case for the prosecution all the facts have to be looked at from the viewpoint of larceny; so that if there is not sufficient evidence that the property was stolen and recently stolen, there would be no case to answer. Moreover, as in the issue of guilty knowledge, a plausible explanation given by the accused would rebut any natural presumption which may have been raised by the evidence as to larceny and recency of possession.

Naturally, in the matter of larceny, no less than in that of guilty knowledge, the facts adduced and relied upon to prove it must not be capable of bearing an innocent interpretation (*Teper* v. *R.* [1952] A.C. 480). Like all other circumstantial evidence, they must speak for themselves and without ambiguity; they must be inconsistent with any result other than the truth of every fact which forms the subject of the inquiry, so that when one examines all the facts together one finds that, as a reasonable person, one's "judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, it does not satisfy that test; if it leaves gaps, then it is of no use at all" (*R.* v. *Podmore, coram* Lord Hewart, C.J., Winchester Assizes, 1930: see Wills' Principles of Circumstantial Evidence, 7th ed., by V. R. M. Gattie, p. 44).

Three examples illustrate the point to perfection.

Sbarra

First, *R.* v. *Sbarra* (1918), 13 Cr. App. R. 118. There a Clerkenwell firm of tobacco merchants dispatched a quantity of parcels to a consignee at Hammersmith on the morning of the 5th January, 1918. Although it was not proved that they never reached their destination, it was established that in the middle of the night of the 5th to the 6th January, some of them were taken in by the prisoner himself through a side-door in his shop which was situated opposite the prosecutor's premises. Afterwards, one of those who delivered the goods was seen with similar parcels which he dropped and ran away. No evidence was called by the defence. On appeal, the court declared that, "it would have been hopeless in the face of the evidence which was given to ask the jury to say that the goods had not been stolen" (*ibid.*, p. 121).

Fuschillo

In *R.* v. *Fuschillo* (1940), 27 Cr. App. R. 193, the Court of Criminal Appeal rejected the submission that there was not sufficient evidence to go to the jury that the property concerned was stolen, in the following circumstances:

The appellant was manager of a very small shop in the front room of a corner house in Bermondsey, which was owned by his mother. On 2nd October, 1939, his stock of sugar amounted to 5 cwt., and his sugar allocation thereafter was 1¾ cwt. per week—which was less than he had applied for. Yet when the police searched the premises in the following February, they found—in the scullery and in a side-passage leading from it to the side-door which opened on a side-street—26 cwt. of granulated sugar in twelve 2-cwt. sacks and two 1-cwt. sacks. There was no room in the shop for all the sugar.

When he came into the shop and found the police officers there, the appellant—before being spoken to—said: "My God, I'm a bloody fool. Don't bring the old lady into this, she knows nothing about it." A police officer then cautioned him and, pointing to the sugar, said: "You have here 26 cwt. of sugar which I have reason to believe has been stolen." The appellant said: "I don't know why I took it in. I'm a bloody fool. This means going away." The police officer asked: "Do you care to tell me where it came from?" To which the appellant replied: "Be satisfied and take it away, but don't take me." He was then arrested, and on his way to the police station, said: "Can't we do something about this? For the old lady's sake, take the stuff away and don't charge me." When charged and cautioned, he made no reply. There was no information as to where the sugar came from or the circumstances in which the appellant received it, and he did not give evidence at his trial.

Now it would easily occur to the ordinary observer to ask: How could the appellant's stock increase from 5 cwt. in October to 26 cwt. in February, at a time when sugar was so scarce and so strictly rationed? How came it that he was possessed of 2 cwt. sacks—no less than twelve in number—when there was such a clamant demand for sugar and the whole of his legitimate weekly allowance was $1\frac{3}{4}$ cwt.? And why was the whole of that huge supply in granulated form, although individual customers not infrequently ask for cube sugar? These were a few of the important questions which needed answering, and to which no answer was forthcoming from the person who knew best, to identify the source of the property and to define the title thereto (as well as to throw light on the appellant's state of mind when he received the sugar into his possession)—other than his statements to the police—which, it is submitted, were consistent with guilty knowledge rather than indicative of the larceny of the goods.

Young and Another

R. v. *Young and Another* (1953), 36 Cr. App. R. 200, is interesting because the defendants gave an explanation of how they had come by the unidentified property. The jury convicted both of receiving, and the Court of Criminal Appeal declined to inferfere with the verdict. The facts were that the police went to the premises occupied by Spiers—the other prisoner—and said that they were looking for metal, which he denied having; but they found a considerable quantity of new, untarnished and recently milled metal hidden away. Spiers then said that he had paid Young £5 for it the day before. When Young was interviewed, he said that he had picked the metal from a dump.

These facts obviously speak for themselves both as to theft and as to guilty knowledge. It is surely most unusual that a large quantity of metal of the above description should be found lying in a dump, apparently without an owner. Would it be there, unless some dishonest hand had moved it from its proper custody and place? Furthermore, the taking of such property from a dump (if Young is to be believed on that point) is not necessarily consistent with innocence; while his parting with it to Spiers for a comparatively small consideration (if accurately stated) also points to guilty knowledge in Young. As for Spiers, the purchase by him from Young of such property for a relatively low price, and the denial of its presence on his premises—whereas, in fact, it was concealed there—all point to guilty knowledge in Spiers. When it is considered that—as against this weighty evidence which lay in one scale—Young alone went into the witness box and placed on the other scale merely the weight of his own assertion that the property was not stolen—is it surprising that the jury convicted both prisoners of receiving?

To sum up, where direct evidence of larceny is not available one looks for unusual features in the transaction under investigation. Yet (*a*) no man ought to be called upon to account for the possession of any goods, unless such circumstantial evidence were adduced by the prosecution as, in the absence of any evidence in answer, would entitle a reasonable jury to find that the goods were stolen and stolen recently; and (*b*) a plausible explanation given by the accused would rebut any natural presumption which may have been raised by the evidence as to larceny and recency of the larceny.

J. Y.

AFTER ELEGIT

WHILST it is generally present to most minds in the legal profession that the procedure by writ of elegit, remarkable alike for a venerable antiquity and an intractable cumbrousness, has been abolished by the Administration of Justice Act, 1956, the precise nature and potentialities of the new weapons for striking at a judgment debtor's interest in land are sufficiently complicated to warrant close examination by the practitioner interested, *malgré lui*, in enforcing a judgment. It will be necessary to begin with just a little history.

Before the beginning of this year the appropriate method by which a debtor's landed interests could be brought to answer a judgment depended on the nature of the interest and upon the court in which the judgment was obtained. Only if it was a High Court money judgment and the interest a legal estate did elegit lie as of right. To reach an equitable interest the creditor could apply for the appointment of a receiver by way of equitable execution of his judgment, a remedy that was also open in many cases where the debtor had a future interest in personalty. The county court could also appoint a receiver whether of personalty or of an equitable interest in land (*R.* v. *Selfe* [1908] 2 K.B. 121), but it had no equivalent of the writ of elegit. The procedure contemplated by statute for making good a county court judgment by operation on land of which the debtor had the legal estate was by removal into the High Court for the purpose under s. 136 of the County Courts Act, 1934, but this was discretionary in the court. Moreover, since the means of removal was an order of certiorari, it added considerably to the complexities of an already involved course of action. A leasehold interest was attachable by the sheriff under a writ of *fi. fa.* or by the county court bailiff under a warrant of execution, and this represents about the only mode of enforcing a judgment against a legal estate in land which remains unchanged in the new state of affairs. The sheriff cannot take possession, but can sell the term of years and assign it under the seal of his office.

In practice, the enforcement against land of a judgment entered up in the Supreme Court was facilitated by the provisions of s. 195 of the Law of Property Act, 1925, under which, subject to the registration as a land charge of a writ to enforce it, such a judgment operated as an equitable charge on all the judgment debtor's beneficial interests in land, and on those interests of which he was entitled to dispose for his own

benefit without another's consent. But proceedings to obtain the benefit of this charge could not be taken until the expiration of a year after entry of the judgment. Nevertheless, this provision was for long treated as a means whereby the necessity of delivering a writ of elegit to the sheriff might be avoided ; so that when, in 1955, the convincingly reasoned decision of a county court judge cast doubt on the practical efficacy of the charge so constituted unless the writ had been perfected by the inquisition of a sheriff's jury, the reaction of the advisers of some thousands of judgment creditors must have been anything but adulatory of the simplicity of the system in which they were caught up.

Effect of the 1956 Act

Now, from this scheme of things, three features have been swept away, and in their place one new facility enacted, and an existing one extended. Besides elegit, the automatic equitable charge under s. 195 of the Law of Property Act has been abolished ; so, too, since the High Court and the county court will henceforth enjoy similar powers in this field, has the provision for removal by certiorari of county court judgments. Yet the main points of the new set-up are so far familiar in that they embrace an equitable charge (a specific judicial charge in lieu of an automatic one), registration of it as a land charge, and, if desired, the appointment of a receiver.

Apart from the possibility of executing his judgment against a term of years by writ of *fi. fa.*, a judgment creditor who knows that his debtor has an interest in land and who decides to seek enforcement of the judgment against that interest has at the outset two broad choices. He can apply for a charging order on the land (and we shall see later that proceedings following on this may involve the appointment of a receiver) ; or he can apply straight away, by a procedure well known to practitioners, for the appointment of a receiver by way of equitable execution. He may adopt the latter course whatever the nature of the debtor's interest in the land. For the power both of the High Court and of the county court to grant equitable execution in this form is, by s. 36 of the Administration of Justice Act, 1956, " extended so as to operate in relation to all legal estates and interests in land." And naturally the former jurisdiction to appoint a receiver, which is in all cases discretionary, remains for equitable interests in land as for personalty.

The new judicial charge

The principal innovation is the charging order on land—the creature of s. 35 of the 1956 Act. It may be imposed for the purpose of enforcing a judgment or order for the payment of money to a person, and it covers any such land or interest in land of the judgment debtor as may be specified in the order imposing it. Its tenor is to secure the payment of any moneys due or to become due under the judgment, and it may be made either absolutely or subject to conditions " as to notifying the debtor or as to the time when the charge is to become enforceable or as to other matters."

Procedure is laid down in R.S.C. (No. 3), 1956, and in the County Court Rules (No. 3), 1956. The latter merely state that the application is to be made to the judge on notice, and give the form of a charging order. By the former a more elaborate code is prescribed in the shape of a new Ord. 46, r. 2. If there are pending proceedings, the application for a charging order is made *ex parte* in the Division in which the proceedings are then pending ; otherwise (for a foreign judgment or an arbitrator's award may be similarly enforced in certain circumstances—see s. 35 (4) of the 1956 Act) it is by *ex parte* originating summons in the Chancery Division. In the first instance the order is one to show cause ; it specifies time and place for further consideration and imposes the charge until that time in any event. The creditor must support his application by an affidavit identifying the judgment, specifying the land, and stating that to the best of the deponent's information and belief (giving sources and grounds) the land in question or the interest in question in that land is the judgment debtor's. It may not be easy in all cases to describe the nature of the debtor's interest with sufficient precision, but in this regard do not let us forget the virtues of a summons for examination of the debtor as to his means.

When the matter comes up for further consideration, proof of service of a copy of the *ex parte* order on the judgment debtor is required unless the court otherwise directs. Subject thereto, the court is to make the order absolute unless it appears, on the representation of the debtor or otherwise, that there is sufficient cause to the contrary. The order absolute may be made with or without modifications. If it appears that the order *nisi* should not be made absolute the court is to discharge it.

Registration

The repeal of s. 195 of the Law of Property Act, 1925, by no means signals the end of land charges registration in connection with the enforcement of judgments. Having obtained an order *nisi* charging the land or the debtor's interest therein, the creditor should immediately register it under the Land Charges Act, 1925, or under the Land Registration Act, 1925, as the case may be. Section 35 (3) of the 1956 Act renders those Acts applicable as in the case of " other writs or orders affecting land issued or made for the purpose of enforcing judgments," which is to say that the order imposing the charge (whether made by the High Court or the county court) must in order to preserve priority over a purchaser be registered under s. 6 (1) (*a*) of the Land Charges Act, against the name of the judgment debtor, or as a caution under s. 59 of the Land Registration Act if the title to the land is registered. (A writ of *fi. fa.* ought to be similarly registered if it affects leasehold land.)

Enforcement

How is the charging order to be given ultimate effect ? The Act says that it is to be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand. In the absence of any rule special to the new form of charge, the High Court practitioner is thrown back on Ord. 55, r. 5A, which, though sub-titled " Originating Summons for Foreclosure," by its terms enables a person entitled to a charge to apply for relief of various kinds, including an order for sale of the property. On the analogy of charging orders on stocks and funds (Judgments Act, 1838, and Ord. 46, r. 1) it seems that an originating summons for sale under this rule will be the readiest means of reducing into tangible form the benefit of a charging order on land. It is a point to notice that, whatever the Division in which the charging order is made, the enforcement proceedings are assigned to the Chancery Division (Ord. 5, r. 5A). One advantage of the new judicial charge as compared with some other procedures is that there is apparently no waiting period before enforcement may be sought. An order charging stocks may not be pursued for six months, and, as we have seen, the automatic charge formerly constituted by a High Court

judgment, coupled with a registered writ to enforce it, was subject to a suspensory period of a year.

The county court has under its general equitable jurisdiction similar authority to enforce charges. Here the rules provide that the new judicial charge is to be enforced in the same county court as imposed it, while the Act makes it clear that such enforcement is not to be restricted by the ordinary pecuniary limits of county court jurisdiction.

Appointment of receiver

A final word or two about receivers. As an auxiliary step in proceedings for enforcing a charging order the court may appoint a receiver. The power to do so is not affected by the jurisdiction in equitable execution, and conversely a receiver may be appointed by way of equitable execution whether or not a charging order has been made. There are, in fact, two distinct situations in which a receiver may be appointed in proceedings founded on a judgment.

The question of registration as a land charge is again important in connection with the appointment of a receiver. In the ordinary way an order making such an appointment, if it affects land, is registrable under s. 6 (1) (*b*) of the Land Charges Act, 1925. However, by s. 36 (3) of the Administration of Justice Act, 1956, when once a charging order has been registered as a land charge it is not necessary to register a subsequent order appointing a receiver, whether the appointment is made in the proceedings to enforce the charge or by way of equitable execution of the judgment. Registration of the charging order, so to speak, " franks " the receiver's appointment so far as concerns registration to secure protection against a purchaser.

J. F. J.

COMPULSORY REGISTRATION: THE PRACTICE OUTLINED

THE extension of compulsory registration of land to Chatham and the Medway region (which came into operation on the 1st March) adds one more area to the growing number of areas where compulsory registration is already in operation. The new extension covers the boroughs of Chatham, Gillingham and Gravesend, the city of Rochester, the urban districts of Swanscombe and Northfleet, and the rural district of Strood. This latest extension is, of course, only the first instalment of the intended inclusion of the whole of the county of Kent. That there are compelling reasons for the extension of compulsory registration is confirmed by the Roxburgh Committee, who, in their recent Report on Land Charges, recommended the extension of compulsory registration of title to the whole of England and Wales as soon as possible.

While to many practitioners in an area so near to London land registration must be fairly well known, there must still be quite a number of solicitors, particularly in the rural parts of the Medway district, who are unfamiliar with the practice under which registration is carried out. It will not, therefore, be amiss to set out very shortly some of the features of the practice.

Occasion for registration

The immediate matter to which the solicitor must address himself is the conversion of an unregistered title into a registered title. This must be carried out on the occasion of the purchase of freehold or leasehold property. Unless the purchaser registers his title at H.M. Land Registry within two months after the completion of his purchase he does not obtain the legal estate to his property but only an equitable interest in the property. This applies, as regards leasehold property, to any case where the lease has forty years or more to run and in addition the compulsion relates to any new lease taken up for a term of forty years or more.

While the practitioner should not delay in making application for registration, the Chief Land Registrar has power to extend the period in suitable cases.

The procedure prior to an application for first registration does not differ from that adopted in the case of ordinary unregistered land, although if the solicitor wishes he can use the statutory form of transfer instead of the normal conveyance or assignment. The sale and purchase proceed on the usual lines of investigation of title and examination of the title deeds. It is, however, very important that the plan of the property should be accurately drawn, and that the land itself should be correctly defined on the ground either by boundary walls or fences or, in the absence of these, by boundary posts. While H.M. Land Registry does not define the strict boundaries of the property on the filed plan or Land Registry General Map, the general boundaries are as accurately defined as the Land Registry can fix from examination of the documents or a survey of the land and measurement from some fixed point. The official definition of the general boundaries is as accurate and often more accurate than the plan or plans on the title deeds.

Procedure on first registration

When the purchase (or grant of a lease) has been completed the solicitor should send all the deeds together with the contract, enquiries, abstract, requisitions, search certificates, etc., to the Land Registry with a form of application for registration. There are several different forms of application (the most usual one being Form 1.B. for registration of a purchaser after purchase of freehold land). The application form is not difficult to fill up, and contains the necessary instructions for this to be done.

If the title is found by H.M. Land Registry to be in order, a register of the title of the new proprietor of the land is prepared and a copy of such register and of the Land Registry plan is issued to him or his solicitors together with a certificate of title called a land certificate. If the property is mortgaged no land certificate is issued but in lieu thereof a charge certificate is issued to the mortgagee.

In about ninety-nine per cent. of cases the title to the property is pronounced by the Land Registry to be an absolute title (in freehold cases) or good leasehold title (in leasehold cases). In these cases the certificate is the sole document of title to the property (apart, in leasehold cases, from the lease itself), and in subsequently investigating the registered title all that is necessary is to obtain from the Registry an office copy of the register and a certificate that no entries have been made in the register since such office copy was furnished.

The register is in three parts. There is a property register, giving a description of the land, a proprietorship register,

giving the name and address of the proprietor, and the charges register, giving particulars of mortgages and other incumbrances.

There are some instances where the Land Registry does not feel justified in granting more than a possessory title to property—particularly in cases where a title to land is based on a claim acquired by possession under the Limitation Acts. Where such a possessory title is given an intending purchaser or mortgagee may have to investigate the title earlier than the time of first registration.

Dealings

Having described briefly the practice up to the time of first registration, let us consider shortly the registration procedure in subsequent dealings with such registered property.

A straightforward sale and purchase of registered property is carried out by a simple form of transfer in place of the unregistered conveyance. Separate forms of transfer are provided where the transfer is of part only of the land on the register. If the vendor imposes restrictive covenants they can be included in the transfer, together with the grant or reservation of any rights of light, etc. In a large number of cases, however, the bare form of transfer is sufficient for the purpose.

The mortgage of the registered land can be carried out by a simple form of charge, although building societies and banks prefer to have a mortgage in their own form. On registration an entry of the mortgage on the charges register is made and either the original or a copy of the mortgage or charge sewn up in the charge certificate.

The mortgage or charge can be discharged by a simple form of discharge, but most building societies still endorse a statutory or other receipt in the fold of the mortgage.

Where a registered proprietor of the land dies his death can be registered at the Land Registry on production of probate of his will or letters of administration to his estate—or if he is one of joint proprietors, his name can be removed from the register on production of his death certificate.

A practice much used by banks is to take only an equitable mortgage on lending money on the security of registered land, and to hold the land certificate as security. It is possible in such cases for them to give notice of such deposit to the Land Registry to prevent dealings with the land, and a simple form of such notice is provided by the Land Registry Rules. Similarly, any other persons claiming to be interested in the registered property can lodge a caution at the Land Registry, so that the cautioner may have notice of any application which may be made to transfer or otherwise deal with the land.

There are many other matters which might be mentioned, such as dealings with settled land, lost land certificates, etc., but our present purpose is limited to outlining for those not yet familiar with the system the broad principles and practice on which registered land conveyancing is carried out. The more detailed practice can be found in the specialised practice books.

It may be said in conclusion that H.M. Land Registry holds itself out to assist the legal practitioner in carrying out land registration, and can be relied on to give help and information to the solicitor on matters of difficulty or serious doubt.

J. J. W.

Landlord and Tenant Notebook

THE RENT BILL: IDLE THREATS

THE Rent Bill continues to be the subject of much controversy, and new amendments are heard of almost daily; it may well be apprehended that, in the result, decontrol will give rise to as many difficulties of interpretation as did control. The debates in Standing Committee A make, indeed, interesting reading for those familiar with those difficulties. But what I propose to discuss in this article is the reaction of the Minister of Housing and Local Government to information that certain landlords were already serving notices to quit, which reaction took the form of a "serious warning to anybody who tries to jump the gun or cast dust in anybody else's eyes." This warning was uttered in the course of the debate on Sched. IV, amended to make the period of grace fifteen instead of six months.

The Minister did not suggest that legal sanctions were or would be made available, and in a sense the warning might itself be considered an idle threat (the difficulty of making mere fright the subject of a claim was recently illustrated by *Behrens* v. *Bertram Mills Circus, Ltd.*, *ante*, p. 208). The "warning" really consisted of what is contained in the following passage: "I want to tell the Committee and the country that a letter or notice of that kind [one designed to lead the tenant to believe that it is an effective notice to quit and will take effect as soon as the Bill permits] has no legal effect whatever. Under paragraph 2 of the Schedule, in order to be valid a notice has to specify a date, and no such notice can be served until the Bill comes into operation . . . I am considering whether I should use my powers under the Sixth Schedule to prescribe that the notice which the landlord will need to give under this Schedule should set out quite clearly, unmistakably and in detail the tenant's rights under the Bill." (The reference would be to para. 15 of Sched. VI.)

What the warning amounts to can, I think, be fairly stated under three heads: (i) Notices given now are ineffective because they do not specify the right date. (ii) They are ineffective because there is no law to make them effective. (iii) They can be made ineffective as not complying with requirements as to form and contents (to be prescribed under the power conferred by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 14, which is referred to in Sched. VI, para. 15).

No date

The first head may, perhaps, not be as sound as it seems to be. In *May* v. *Borup* [1915] 1 K.B. 830 a notice to quit "at the earliest possible moment," the tenant recipient holding from year to year and the tenancy being determinable by six months' notice given on a 1st March or 1st September, was served on 23rd December, 1913, and was held to be effective for 31st August, 1914. True, the decision was spoken of with much disapproval by Atkin, L.J., in *Phipps & Co. (Northampton and Towcester Breweries), Ltd.* v. *Rogers* [1925] 1 K.B. 14, in which the "earliest day your tenancy can legally be determined by valid notice to quit given by you to us at the date of service under the terms of the tenancy

hereof " had to be ascertained by reference to licensing law. But in *W. Davis* v. *Huntley (Spitalfields), Ltd.* [1947] 1 All E.R. 246 effect was given to the words " we must give three months' notice to terminate the lease " as determining, without specifying any date, a lease determinable by three calendar months' notice at any time.

No power

If that were all, then the wicked landlords might not feel put out by the warning if they could rely on the " until such date specified " (see below) being liberally interpreted. But it is not all ; and the second head can hardly be impugned. Schedule IV, para. 2, of the Bill runs : " (1) Where immediately before the time of decontrol the dwelling-house *was* the subject of a statutory tenancy or of a controlled tenancy which would or might come to an end within six (fifteen) months of that time by effluxion of time or notice to quit, the tenant under that tenancy shall be entitled to retain possession of the dwelling-house until such date specified in a notice served on him by the landlord *at or after the time of decontrol . . .*" ; one need go no further, the " time of decontrol " being defined in para. 1 as " the time at which the Rent Acts cease to apply to a dwelling-house by virtue of subsection (1) or (3) of section nine of this Act." The right to serve notices before the coming into force of the statute providing for such notices was a special feature of the Landlord and Tenant Act, 1954, which received the Royal Assent on 30th July but came into operation on 1st October of that year (s. 70 (2)). But " transitional provisions " (s. 68 (2) ; Sched. IX) authorised the Lord Chancellor (acting under s. 66) to exercise form-prescribing powers at any time after the passing and before the commencement of the Act so as to bring the regulations into operation at any time after they were made ; " and where the date, or the end of a period, specified by a notice which is given in a form so prescribed falls after the time at which this Act comes into operation the notice shall not be invalid by reason only that it was served before that time " (Sched. IX, para. 1). The Landlord and Tenant (Notices) Regulations were in fact dated 19th August and came into operation on 27th August, 1954. The problem of what would have been the consequences of a repeal of the statute enacted before 1st October did not arise.

" Prescribing "

The threat to exercise the power to prescribe provided for in Sched. VI to the Bill (a Schedule headed " Minor and Consequential Amendments and Application of Enactments ") should prove an additional deterrent. The power is, as mentioned, to be the same as that conferred by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 14. That section authorised the making of regulations prescribing a (new) form of notice of increase of rent, matters as to which notice should be given by notices in rent books and similar documents, and a form of application for registration (decontrol) ; Sched. VI, para. 15, extends the power, enabling the regulations to prescribe forms for " such notices, certificates and other documents required or authorised under this Act *and* requiring such notices, certificates and documents to contain such information as may be specified in the regulations." Notices of increase prescribed under the 1933 Act had to contain " information " in appended notes. In the case of forms prescribed under the Landlord and Tenant Act, 1954, the operative word is " explanation " rather than " information " : " Where the form of a notice to be served on persons of any description is to be prescribed . . . the form to be prescribed shall include such an explanation of the relevant provisions of this Act as appears to the Lord Chancellor requisite for informing persons of that description of their rights and obligations under those provisions."

It may be that the function of the Minister of Housing and Local Government is limited to the imparting of information, while the Lord Chancellor is given the task of explaining, because the former may be a layman and the latter may have at some time in the course of his career " sat as Poor Man's Lawyer." But at all events, while it may be easier for a landlord to guess what notes will contain than how rights and obligations will be explained, the guess could only be a wild one ; and if prescribing a form of notice to quit would at first strike anyone brought up in the common law as an unnecessary and unwarrantable interference with freedom of expression, it is fair to say that there is something exceptional about the first effective notice to be given on decontrol.

R. B.

HERE AND THERE

QUEST FOR JUSTICE

AFTER laughing heartily (as I hope we all have) at " Brothers in Law," that double rarity, an intelligently funny film and a film of legal life with hardly a technical slip, we may wonder how it happens that the English, with their amateur, haphazard, illogical, amiably antiquated approach to the administration of justice, nevertheless manage to tie up their cases in such neat little packages so very expeditiously. Look what happens to the reasonable, logical French when they set themselves to unravel judicially a mystery like the Dominici case. It lasts literally for years and ends with a despairingly inconclusive shrug of the shoulders. In Italy the Montesi case follows the same pattern. Very soon it will be four years since the body of Wilma Montesi, a carpenter's daughter, was found on the beach at Tor Vianica near Rome in circumstances which suggested murder or manslaughter. Since then the mystery has brought forth a sensational, but as yet unconcluded, prosecution for libelling the police, an enormous socio-political scandal which almost brought down the government, and now at Venice a triple prosecution for manslaughter which has been dragging its slow length along since January, with the band-leader son of a former Foreign Secretary, a self-ennobled Marquis and a former Chief of Police in the dock. So far, the only tangible result of the proceedings is that one of the witnesses has been summarily gaoled for eighteen months for perjury. As a fortune teller and professor of the occult sciences, he must feel this unforeseen sequel something of a " let down " for his technical abilities, which evidently did not warn him where he was going. But, wizard or no wizard, he is a very small fish for such a prodigious great trawl. The trawl proceeds.

SELF-DEFENDED

THE event of last week in England was the trial of the astonishing Mr. Alfred Hinds, who, at the Nottingham Assizes, defended himself single-handed, with great credit and some success, against two experienced counsel, silk and junior. He earned an acquittal on the major charge of breaking out of

Nottingham Gaol, being convicted only on the lesser charge of escaping; he had the satisfaction of publicly accusing the police and the Lord Chief Justice of conspiring to pervert the course of justice at the former trial which had ended in a twelve years' sentence. He cited authorities to Mr. Justice Finnemore, and stood up to him in legal argument, at one point provoking a burst of laughter in court by requesting him: "Please don't anticipate my questions." His advocacy earned a compliment from the judge: "You are not defended by counsel and it is our practice to give a lot of latitude. We do that because defendants usually do not understand the procedure. But I think you know more about that than most of us." The Old Bailey episode in "Brothers in Law" reminds us that this is by no means a unique phenomenon, but the virtuosity of Mr. Hinds was altogether exceptional: he expounded the difference between felony and misdemeanour. He raised and maintained a point on extradition on which the judge reserved his decision till the following day. "I am rather well up in the law with regard to this," said Mr. Hinds. "I will explain it." And explain it he did with reference to case law, statute law and international treaties. In the end, his 249 days' freedom and sojourn in Ireland cost him a nominal eleven days' sentence. Moreover, by having his case heard in open court, instead of being dealt with in prison as a disciplinary matter, he avoided the probable cancellation of his remission. On the whole, he has proved himself a remarkable legal tactician. On another road he might have worn a wig with some effect.

ANTI-WIG

IT was an accidental but very pleasing coincidence that it should have been a Mr. Wigg who made a furious attack on the Bar, or a section of it, when the House of Commons was considering the Disqualifications Bill. Perhaps a little unfairly, the coincidence of the name detracts from one's sense of the high seriousness of his purpose in wishing to exclude from the House recorders and chairmen of quarter sessions, but then he might have done something to counteract it himself by adopting a high seriousness of tone. "There are those who hold or have held the office of recorder that I would not appoint as unpaid lance-corporals in an unarmed company of the Pioneer Corps" has a fine colloquial ring and ought to be good for a laugh anywhere—at the Victoria Palace no less than the Palace of Westminster—and it must give one great satisfaction to utter it, but what persuasive effect would it have on the unconvinced or unconverted? Mr. Wigg was also anxious to exclude barristers who acted on behalf of the Crown or any Government Department for remuneration in excess of £100. "The more a Member is a lawyer, the less likely he is to make a good M.P. because the very qualities which make him a good and successful lawyer prevent him from attending regularly in this House. At least we ought to know who is getting what." All that, of course, is well enough and true enough and there is a great deal to be said for demanding of Members of Parliament a monastic detachment from all worldly affairs and activities. You mustn't have lawyers in the House, at any rate successful lawyers, because their practices distract them. You mustn't have company directors because you can never know the ramifications of their interests. You mustn't have trade unionists because their loyalties are divided. You mustn't have journalists (or let M.P.s write for the newspapers) because that opens the door to self-advertisement and subtle corruption. Members must not accept invitations to dinner because food and drink can be a form of bribery. In short, ideally, our legislators should be an assembly of self-abnegating philosophers. Of course they should. But if that were the qualification, the House would be empty.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

British Universities' International Relief Organisation

Sir,—I should be grateful if you would call your readers' special attention to the appeal which the British Universities' International Relief Organisation is making for money to provide relief in the way of tools, paint, equipment for occupational therapy, etc., for the Hungarian refugees.

As well as this we are running an ambulance which, in addition to ordinary use, carries refugees from the Hungarian border to Austrian camps.

We also wish to start a training hostel for 100 girls under sixteen years of age who at the moment are not receiving any of the educational facilities which are available to the boys. This would need £75 per day to run, given the initial equipment.

A non-propaganda news-sheet and an Anglo-Hungarian grammar are also urgently required.

The organisation began with monetary gifts from a few generous friends, but if it is to continue this essential and urgent work it must now invite financial help from others.

All donations, made payable to the Treasurer, British Universities' International Relief Organisation, 18 Queen's Gate Terrace, London, S.W.7, will be gratefully acknowledged.

MANUELA SYKES,
President.

London, S.W.7.

The Law of Restrictive Trade Practices, etc. (Wilberforce, Campbell and Elles)

Sir,—We are grateful for your prompt review of our book and for such commendation as your reviewer has accorded it. We would like to reply to two criticisms.

The first is a criticism of hesitancy "in stating the law where it is perfectly clear." We felt that it was not the function of a text-book, dealing with a new subject, to attempt to lay down the law in advance of court decisions, and that where individuals have expressed doubts to us as to the interpretation we ought to deal with the points as doubtful.

Secondly, there is a passage in the review where your reviewer says bluntly "The book is wrong." Without arguing the point in your columns, we must say that with all respect we differ, and though for our part we accept the criticism that evidently we have failed to make our point clear, or your reviewer would not have taken us up, we venture to suggest that greater modesty of expression is desirable when a reviewer—particularly an anonymous one—disagrees with an opinion expressed before the courts have established the law.

THE AUTHORS.

London, W.C.2.

Mr. Peter Blandy, solicitor, of Reading, has been elected a member of the council of the Reading Chamber of Commerce.

Mr. Peter Anthony McDonald, solicitor, of Manchester, was married recently to Miss Anne Beryl Bray, of Worsley.

BOOKS RECEIVED

Sexual Offences. A report of the Cambridge Department of Criminal Science. Preface by L. RADZINOWICZ, LL.D. pp. xxvii and 553. 1957. London : Macmillan & Co., Ltd. £3 3s. net.

Stamp Duties. Second Edition. By F. NYLAND, LL.B., Solicitor of the Supreme Court. pp. xxv and (with Index) 270. 1957. London : Butterworth & Co. (Publishers), Ltd. £1 5s. net.

Companies : Law and Practice. Third Edition. By S. W. MAGNUS, B.A., of Gray's Inn, Barrister-at-Law, and MAURICE ESTRIN. pp. xxxv and 928. 1957. London : Butterworth and Co. (Publishers), Ltd. £3 3s. net.

Brief Writing and Oral Argument. By EDWARD D. RE. pp. 192. 1957. New York : Oceana Publications. £2 net.

Jervis on The Office and Duties of Coroners with Forms and Precedents. Ninth Edition. By W. B. PURCHASE, C.B.E., M.C., M.B., D.P.H., of the Inner Temple, Barrister-at-Law, and H. W. WOLLASTON, of the Middle Temple, Barrister-at-Law. pp. xxiv and (with Index) 565. 1957. London : Sweet & Maxwell, Ltd. £4 4s. net.

The Discharge and Modification of Restrictive Covenants. By G. H. NEWSOM, Q.C., of Lincoln's Inn. pp. lxv and (with Index) 414. 1957. London : Sweet & Maxwell, Ltd. £2 5s. net.

The Law of Road Traffic. Second Edition. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (Lond.), of the Middle Temple, Barrister-at-Law. pp. lxviii and (with Index) 408. 1957. London : Shaw & Sons, Ltd. £1 17s. 6d. net.

Jurisprudence. By R. W. M. DIAS, M.A., LL.B. (Cantab.), of the Inner Temple, Barrister-at-Law, and G. B. J. HUGHES, M.A. (Cantab.), LL.B. (Wales). pp. 1 and (with Index) 529. 1957. London : Butterworth & Co. (Publishers), Ltd. £2 2s. net.

Contracts and Conditions of Sale of Land. Second Edition. By E. O. WALFORD, LL.D. (Lond.), Solicitor of the Supreme Court. pp. xxxix and (with Index) 351. 1957. London : Sweet & Maxwell, Ltd. £3 15s. net.

Tax Planning and the Family Company with Precedents. By DAVID R. STANFORD, M.A., LL.B., of the Middle Temple, Barrister-at-Law. pp. xxviii and (with Index) 412. 1957. London : Sweet & Maxwell, Ltd. £2 10s. net.

A Current Digest of the Law Affecting Accountancy. Sixth Issue, 1st January—30th April, 1955. General Editor : F. SEWELL BRAY. Digest Editor : T. W. SOUTH. pp. 74. 1957. London : The Incorporated Accountants' Research Committee. 5s. net.

REVIEWS

The Copyright Act, 1956. By D. H. MERVYN DAVIES, M.C., LL.B., of Lincoln's Inn, Barrister-at-Law. 1957. London : Sweet & Maxwell, Ltd. £1 1s. net.

The Copyright Act, 1956, became law on 5th November, 1956, but it is not yet in operation. It is anticipated that it will be brought into operation by the Board of Trade after at least the more important of the regulations and Orders in Council contemplated by the Act have been issued. The Act contemplates a number of regulations dealing with important topics, and Orders in Council are required to give protection to works originating in the Commonwealth and in foreign countries, and considerable interest attaches to the form of such orders having regard to the new U.N.E.S.C.O. Copyright Convention and its ratification by the U.S.A. Until such regulations and orders are published it is impracticable for a textbook fully to cover the new law, but the complexity of the new Act makes it essential that lawyers interested in the subject should have available immediately an annotated edition of the Act and this book admirably fulfils this need. An annotated copy of the Act is all the more essential in that the Act of 1956 seems full of traps for the unwary, such as the fact that the familiar words "substantial part" which used to be part of the definition of copyright are now found tucked away in s. 49 (1).

Some indication of the complexity of the new Act can be realised from the fact that while the Act of 1911 contained thirty-seven sections and occupied thirty-two pages in the Stationery Office copy, the Act of 1956 contains fifty-one sections and nine schedules, and occupies ninety-three pages.

Moreover, though a large part of the Act of 1911 is substantially repeated in the Act of 1956, it does not appear in the same order or even in the same comparable sections. A most useful feature of this book therefore is the set of comparable tables (p. 125) showing in what section of each Act is to be found the comparable provision of the other Act.

The book contains an introductory statement describing the main provisions of the Act of 1956, but it was clearly impracticable in twenty-four pages to do more than indicate the more important provisions. These, however, are clearly set forth, though it may be suggested that the part dealing with industrial designs does not make clear that the basic change introduced by the Act of 1956 is to make artistic copyright in such designs depend upon their actual use for industrial purposes and not, as under the Act of 1911, upon the intention of the artist at the time of their creation.

As has been said, however, the main value of the book would seem to lie in the annotations to the sections and the comparative tables with the Act of 1911. These supply an immediate and essential need and would seem to supply it very efficiently.

Law and Orders. Second Edition. By Sir CARLETON KEMP ALLEN, M.C., Q.C., D.C.L., Hon. D.C.L. (Glasgow), F.B.A., J.P., of Lincoln's Inn. 1956. London : Stevens & Sons, Ltd. £2 2s. net.

Quoting, no doubt, from one of the many enthusiastic Press notices which greeted the first edition of this book, the publishers tell us that if ever a book ought to be read, marked, learned and inwardly digested it is this. There is certainly no difficulty in reading it, and so vigorous is the author's advocacy that to read it is to mark and learn the points of appraisal and criticism which are made on almost every page of the growth and present scope of our system of delegated legislation. But Sir Carleton demands more than inward digestion by the reader. He does not believe that it is beyond human ingenuity to reform the procedures and practices which have brought about the weaknesses and the possibilities of injustice of which he complains ; and it is to Parliament that he looks to attack the problem.

Aside from what may be called, without offence meant, the campaigning aspect of the book, readers will find an accurate and full account of the processes and forms of delegated legislation together with an outline of the history. A description of the civil service, on the whole factual and not unsympathetic, is also among the foundation material on which the author builds his case for reform. (We question, by the way, whether it is, as stated on p. 312, with the executive officer grade of the civil service that the ordinary member of the public most frequently comes in touch. And we wonder whether the word "Principal" on the same page should not be "Assistant Secretary.") Not that the permanent public servant is here held to blame for the defects in the system. It is the scheme of things itself that Sir Carleton Allen, penetrating the enemy lines, brings to bay in the pass to which it has been allowed to straggle.

Not, again, that he denies the necessity of delegation, militating though that often must against a true separation of powers. The central vice, in the author's eyes, lies in legislation that contrives to be judge-proof, and on this point all who care for the rule of law in domestic, no less than in international, affairs will share his sentiments.

But is the case overstated? Any reader who thinks that at times it is will no doubt have in mind the emphasis on the freaks of the system—the account of the Crichel Down case, *Odlum* v. *Stratton*, the judgment in which is printed in an appendix of nearly thirty pages, and the passages, potent though they be, on Crown privilege. None, however, can be heard to complain of boredom. "It is," the author writes, "the cheapness of red tape that makes it so expensive." And again (of the pressure on our legislators): "It is a nice question whether the private Member to-day stands more in dread of the Whips or the scorns of time." By the calculated hilarity of such quips Sir Carleton reinforces the persuasiveness of his arguments.

Current Legal Problems 1956. Volume 9. Edited by GEORGE D. KEETON and GEORG SCHWARZENBERGER on behalf of the Faculty of Laws, University College, London. 1956. London: Stevens & Sons. Ltd. £1 12s. 6d. net.

The public lectures on legal subjects delivered at University College in the Michaelmas and Spring Terms 1955 to 1956 range widely over civil, criminal and constitutional law. The styles of the lectures are diverse, too, from the delicacy of Professor Powell's inaugural lecture on Good Faith in Contracts, treated from a comparative law angle, to the systematically thorough paper by Dr. Schwarzenberger on the Province of the Doctrine of International Law. A good deal of healthy rethinking will be engendered by Mr. Douglas Payne's analysis of the rule of construing statutes according to the intention of the Legislature.

The collection here printed opens with an address delivered by Mr. Justice Devlin to the Bentham Club on the Common Law, Public Policy and the Executive. In this public policy is shown to be a more elastic term than is usually assumed; but his lordship's main purpose is to advance the view that the recession which he notes in the influence of the common law is the result partly of the very nature of that law, and partly of the increase of Parliamentary activity. However, "it does not matter after all where the law comes from; . . . what matters is the law of England."

Sutton and Shannon on Contracts. Fifth Edition. By K. W. WEDDERBURN, M.A., LL.B., of the Middle Temple, Barrister-at-Law. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 12s. 6d. net.

The fifth edition of "Sutton & Shannon" is also the eighth edition of "Pease and Latter," first published in 1909. The fact that a new editor now appears on the scene has not altered the layout of the book, nor, we hasten to add, the admirable lucidity of its expression, even in those many passages where changes in the law have necessitated rewriting and expansion. It is not until one comes to re-examine such an old friend as this, that one fully realises in how many different particulars a basic common-law subject such as contract undergoes change from time to time by force of statute. Thus, apart from the Law Reform (Enforcement of Contracts) Act, 1954, which has reshaped the articles on Writing as Affecting Contracts, the editor has had to deal with new statutory matter on Restraint of Anticipation, Limitation and Hire-Purchase. The new illumination of old principles by recent case law is faithfully reflected, too, and a good number of the illustrations bear dates since the publication in 1949 of the previous edition.

The book continues to provide students with a reliable and interesting exposition of the elements of the law of contract.

Government Departments as Purchasers. By A. S. WISDOM, Solicitor. 1956. Chichester: Justice of the Peace, Ltd. 4s. net.

This pamphlet contains a small introductory note, and then sets out in schedule form the various statutory powers authorising government departments to acquire land, showing against each power the Minister or department concerned, the purposes for which it authorises acquisition, the statute and section and any associated statutes authorising the acquisition, with a final column giving limitations or observations on the exercise of the power.

For any reader who may require this information we can think of no handier guide.

POINT IN PRACTICE

Possessory Title Acquired by Three Persons

Q. I am acting in a matter where there is a good thirty years' possessory title to certain property. This title has been made in the normal manner by suitable statutory declarations. The property was originally of freehold tenure. It is let to weekly tenants and this has been the case for well over the thirty years. The agent who collects the rents (one of the declarants) has always accounted to three persons in equal shares. The survivors of the three persons and the representatives of the one who has died are willing to regard the interests as tenancies in common rather than as joint tenancies. The difficulty I feel is whether a possessory title can be regarded as "land" within the meaning of the Law of Property Act, 1925. If such a title is "land" then there must be a trust for sale, and title would be made on a sale by the two trustees; the equitable interests of the beneficiaries being over-reached. If, on the other hand, such a title is not "land" within the meaning of the Act, there is no necessity for a trust for sale, since s. 34 only applies to "land," and all the beneficiaries would have to join in a conveyance of the property, since their interests could not be over-reached, since both by statute and probably at common law the over-reaching effect of a trust for sale only operated in respect of land. I am doubtful whether a possessory title is "land" within the meaning of the Act since by the definition section (s. 205) "land" is defined as, *inter alia*, "land of any tenure." Now the effect of the Statutes of Limitations and the present Limitation Act is merely to extinguish the right and remedy of the former owner. The possessor does not acquire the old title, e.g., *Tichborne* v. *Weir*. The right of the possessor, as was pointed out in *Tichborne* v. *Weir*, is merely a negative right resting on the inferiority of the right of others to eject him. This being so, I would be obliged if you would express your opinion whether a possessory title is within the Property Acts, and, if it is not, the method of conveying the title interest, or a share only, which it would be advisable to adopt.

A. In English land law an estate in land is quite a different concept from the land itself. Title is held to an estate and not to the land. Unfortunately, the 1925 legislation did not observe this distinction. We would refer you to a very able discussion by Professor A. D. Hargreaves in the *Modern Law Review*, January, 1956, p. 14, *et seq.* We would take the view that as the three persons who have acquired title merely wish to hold in undivided shares, they are as yet joint tenants. The Law of Property Act, 1925, ss. 35 and 36, deal with conveyances, etc., to joint tenants and tenants in common, but do not expressly deal with title arising by adverse possession (even if, as we think is the case, "land" must include any title to land, e.g., which has arisen by adverse possession). A purported severance would, we think, result in the joint tenants holding on trust for themselves as tenants in common, although it is arguable whether they hold on trust for sale (as neither s. 34 (2) nor s. 34 (3) expressly applies). We would suggest that the best practical course is for all persons beneficially interested in the adverse title to join in a deed of arrangement conveying the legal estate to two or more trustees who should be directed to hold on trust for sale and to hold the proceeds on the trusts required. We cannot see how a purchaser could object to title made by such trustees, as the persons joining in the deed would have both legal and equitable estates whatever argument there may be about the exact nature of those estates.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

DIVORCE: HUSBAND DOMICILED IN ENGLAND: WIFE RESIDENT IN GERMANY: CROSS-PETITION FOR DIVORCE GRANTED TO HUSBAND BY GERMAN COURT: VALIDITY

Levett *v.* Levett and Smith

Lord Evershed, M.R., Hodson and Ormerod, L.JJ.

14th February, 1957

Appeal from a decision of Mr. Commissioner Bush-James.

At the time of their marriage in 1947, the husband, an Englishman, was domiciled in England and the wife, a German woman, was domiciled in Germany. In 1952 the wife left the husband and went back to Germany and instituted proceedings in Germany for the dissolution of her marriage on the ground of her husband's cruelty. The husband in those proceedings cross-petitioned for the dissolution of the marriage on the ground of his wife's adultery with *X*. The German court granted a decree of divorce, made absolute on 2nd August, 1953, to the husband and dismissed the wife's petition. After the decree of divorce the wife came to England and tried to marry *Y*, but on being informed that the decree of divorce of the German court was invalid she started to live with *Y* and there was a child of that union born in September, 1953. The husband sought a declaration that the German decree of divorce of 1953 had dissolved his marriage; alternatively, that the court would exercise its discretion in his favour and grant to him a divorce on the ground of the wife's adultery. Mr. Commissioner Bush-James dismissed the petition. The husband appealed.

HODSON, L.J., delivering the first judgment, said that it had been argued that, having the provisions of s. 18 (1) of the Matrimonial Causes Act, 1950, in mind, following upon *Travers* v. *Holley* [1953] P. 246, the court ought to recognise the German decree as being a valid decree of divorce. But even assuming that the wife was resident within the jurisdiction of the German court for a sufficient time to bring the doctrine into force, assuming that she had been deserted by her husband in Germany so that the situation was exactly the same *mutatis mutandis* as that contemplated by s. 18 of the Act of 1950, to his mind that section afforded no support for the proposition that a husband, because he was respondent to proceedings brought by a wife, ought himself to be enabled to obtain relief on his answer. Accordingly, the argument based on reciprocity failed. But in his (his lordship's) view the court ought to interfere with the commissioner's decision on the ground that the husband had not by cross-petitioning condoned or conduced to his wife's adultery. Accordingly, a divorce should be granted to the husband, the court exercising its discretion in his favour.

ORMEROD, L.J., and LORD EVERSHED, M.R., delivered concurring judgments. Appeal allowed.

APPEARANCES: *N. F. Stogdon* (*Church, Adams, Tatham & Co.*, for *Barwell & Blakiston*, Seaford).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 484

INDUSTRIAL INJURY: DECISION BY MEDICAL APPEAL TRIBUNAL ERRONEOUS IN LAW: CERTIORARI

R. *v.* Medical Appeal Tribunal; *ex parte* Gilmore

Denning, Romer and Parker, L.JJ. 25th February, 1957

Appeal from Divisional Court.

In 1936 the applicant, a colliery pick sharpener, sustained an injury to both eyes while at work, his right eye being rendered almost blind. In March, 1955, he suffered a further injury at work, by which the condition of his left eye was so severely aggravated that in the result he was almost totally blind. On his claim for disablement benefit under the National Insurance (Industrial Injuries) Act, 1946, two medical boards provisionally assessed the degree of disablement at 100 per cent.; but a third board made no award. The claimant appealed to a medical appeal tribunal which had before it and incorporated in its award an extract from a specialist's report setting out the facts as to the state of both eyes; but in making its award the tribunal assessed the aggravation at only 20 per cent., showing thereby that they had failed to assess in accordance with reg. 2 (5) of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948 (relating to industrial injuries to paired organs). Section 36 (3) of the National Insurance (Industrial Injuries) Act, 1946, provides: ". . . any decision of a claim or question . . . shall be final." The applicant applied for an order of certiorari to quash the decision of the tribunal on the ground that there was a manifest error of law on the face of the record.

DENNING, L.J., said it was clear that the tribunal had gone wrong in law, and the error appeared on the face of the record. Even if the court had not been able to have recourse to the specialist's report, they could have got the facts by ordering the tribunal to complete the record by finding the material facts, as the regulations required them to do. The point then arose as to the effect of s. 36 (3) of the Act of 1946 which said that "any decision of a claim or question . . . shall be final." Did those words preclude the Court of Queen's Bench from issuing an order of certiorari to quash the decision? On looking again into the old books his lordship found it very well settled that the remedy by certiorari was never to be taken away by any statute except by clear and explicit words. The word "final" was not enough; it meant only "without appeal." It made the decision final on the facts but not on the law. It would follow that a decision of the national insurance and industrial injuries commissioners was also subject to supervision by certiorari, though those persons were so well versed in law that it would be rare that they should fall into error such as to need correction. The order should issue to quash the tribunal's decision. The tribunal would consider the claim afresh.

ROMER, L.J., concurring, said that it would have been deplorable if the court had been constrained to hold that the decision of a medical appeal tribunal, however obviously wrong in law, was immune from review by Her Majesty's courts. The tribunals did their work conscientiously and efficiently; but in the nature of things they were bound to go wrong from time to time in matters of law. It was not in the public interest that inferior tribunals of any kind should be the ultimate arbiters on questions of law.

PARKER, L.J., also concurring, said that though the matter had not been fully argued, he was satisfied that the court had jurisdiction in the present case to grant the order and that it should be made. Order of certiorari issued to quash decision.

APPEARANCES: *D. J. Turner-Samuels* (*Gaster & Turner*, for *I. E. Geffen*, Durham); *Rodger Winn* (*Solicitor, Ministry of Pensions and National Insurance*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [2 W.L.R. 498

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: ALIMONY PENDING SUIT: ASSESSMENT OF AMOUNT: WIFE'S EARNING CAPACITY

Griffith *v.* Griffith

Sachs, J. 23rd January, 1957

Summons (adjourned into court).

The wife came to England from Canada in the summer of 1953 and married the husband in January, 1954. In the interval she had earned £5 17s. 6d. a week as a typist. The parties separated in June, 1956; the wife returned to Canada for a short time, but came back to England, and in November, 1956, filed a petition for restitution of conjugal rights and applied for alimony pending suit. The husband's income was agreed to be some £1,750 a year. There were no children. The registrar decided that the case was not governed by *Rose* v. *Rose* [1951] P. 29 as this was a restitution case: he assumed (as he felt he must) that the wife genuinely desired the restitution. He held, however, that if the husband obeyed the expected order, and the marriage was

resumed, the wife should be expected to maintain herself in the interval; and ordered that the husband pay the wife the sum of £2 a week, which with the money she was able to earn would give her a reasonable standard of living—the intention of alimony orders. The wife appealed. At the hearing of the appeal the alternative figures of £350 or £100 a year, according to the decision of the court whether the earning capacity, which it was accepted that she had, should be taken into account, were agreed.

SACHS, J., considering a submission on behalf of the wife founded on a passage in Latey on Divorce (14th ed., at p. 229, para. 432), that when the only issue for the court was assessment of the amount which should be granted to a wife for alimony *pendente lite*, she had a right to have it assessed on the basis of her common law entitlement to be maintained by the husband, referred to the repudiation in *Waller* v. *Waller* [1956] P. 303, of the suggestion that the court was in any way bound by the old common-law rules with regard to a husband's liability to support his wife. His lordship said that in his view the discretion of the court in assessing the amount which "the court thinks just" was no less wide. Any rules of common law as to the husband's duty to maintain his wife (rules which were discussed in *Jones* v. *Newtown and Llanidloes Guardians* [1920] 3 K.B. 381) might to an extent provide assistance for the court as a guide, but they certainly could not burden the court as a fetter. Turning to the authorities relating to the value of the earnings or earning capacity of a wife on the amount that a guilty husband should be ordered to pay after decree absolute, his lordship said that they were of assistance within the same framework of wide discretion and were regularly applied in practice. It should, however, be noted that so long as the marriage subsisted a husband might often have more difficulty on the particular facts in establishing that his wife ought to go out and work than he would have after that marriage had terminated. The tendency of the courts, during the subsistence of a marriage where the husband was fully capable of supporting his wife, to have regard for what she was actually receiving, rather than to her potential capacities, was apparent from a series of authorities, going as far back as *Goodheim* v. *Goodheim and Frankinson* (1861), 2 Sw. & Tr. 250. In few instances was the contention of a husband that his wife ought to go out and work less likely to prevail than in a case where a wife was seeking restitution of conjugal rights and the husband's financial circumstances were such that she would not normally expect to have to work if they were living together, although everything must depend on the particular facts.

His lordship referred to *Le Roy-Lewis* v. *Le Roy-Lewis* [1955] P. 1, in which Barnard, J., had said (at p. 3): "It has been suggested that because she [the wife] was working before the marriage and is still young, and as there are no children of the marriage, she ought at once to go back into the position she was in before the marriage and start earning her living, with as far as I can see only one object, to reduce the amount of money which the husband should pay to her, his wife. I do not accept that view . . . I see no reason whatever why the wife should go back to earning in order to reduce her husband's liability to maintain her," and to *Rose* v. *Rose*, *supra*; and said that that line of reasoning appeared to have added force in the present case, where the petition was one for restitution of conjugal rights, and in which the wife had not worked at any time while the parties were together. In the circumstances the appeal should be allowed, and the order varied to one of £350 a year. Appeal allowed.

APPEARANCES: *Geoffrey Crispin* (*Joynson-Hicks & Co.*); *F. S. Laskey* (*Harry Myers & Sons*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 478

DIVORCE: PATERNITY: ESTOPPEL: MAINTENANCE ORDER IN FAVOUR OF CHILD

Nokes *v.* Nokes

Barnard, J. 25th January, 1957

Issue as to the paternity of a child. The matter arose upon maintenance proceedings after decree absolute.

A wife who had been granted a decree of divorce, which was made absolute in December, 1954, applied for maintenance for herself and for "the child of the marriage." That child had been born some two months after the parties were married. The husband offered to continue payments "in respect of my daughter" which he had previously been making under an order of the justices; and an order was made accordingly on 13th May, 1955. Some six months later, however, the husband (who acted in person upon both applications) applied to vary that order and in his affidavit denied that he was the father of the child which had been "condoned" [*sic*] by him. At the trial of an issue as to paternity which had been directed upon the husband's appeal against the registrar's dismissal of his application the preliminary point was taken that the husband was estopped from denying paternity by reason of the original order to pay maintenance for the child.

BARNARD, J., stated the facts, observing that an order made by justices was not an order of a court of record, and was not binding on the Divorce Court, and said that the presumption of law was very strongly in favour of legitimacy, and that very cogent and clear evidence was required to rebut that presumption. Counsel for the wife had quite properly taken the preliminary point that the husband was estopped from denying the paternity of the child by reason of the order of 13th May, 1955, for the maintenance of the child. His lordship referred to *New Brunswick Railway Co.* v. *British & French Trust Corporation, Ltd.* [1939] A.C. 1 and to *Lindsay* v. *Lindsay* [1934] P. 162, and said that *Lindsay* v. *Lindsay* (which concerned an estoppel arising from an order for custody) covered the present case. If the husband had really wanted to raise the issue, the time for him to raise it would have been when the wife asked for maintenance for herself and for the child of the marriage. He not only did not raise it then, but had stated in his affidavit that he was ready to continue the maintenance "to my daughter." The crux of the case was that an order for maintenance had been made under s. 26 of the Matrimonial Causes Act, 1950, which estopped the husband from saying that the child was not the child of the marriage. Declaration of paternity accordingly.

APPEARANCES: *Maurice Drake* (*Ashley, Tee & Sons*); *Robin Dunn* (*Drysdale, Lamb & Jackson*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 493

DIVORCE: MAINTENANCE: CONCEALING REMARRIAGE: "CONDUCT OF THE PARTIES"

Hayfield *v.* Hayfield

Sachs, J. 25th January, 1957

Summons (adjourned into court for judgment).

On a husband's application in December, 1955, to vary a maintenance order of December, 1944, made in favour of the wife for £5 a week less tax, the wife swore an affidavit from which any court would infer that it was being asked to accept as true that the wife had not remarried and that since 1950 she had been neither able to nor had undertaken any work. In fact the wife had remarried a husband in February, 1951, who, on the evidence, was probably paying her £5 a week for "housekeeping." She had, moreover, since 1950, been managing a café which had been sold in 1956, and the court inferred that she had been managing it, or had shortly previously been managing it when she swore her affidavit. On 11th January, 1957, the registrar made an order reducing the amount of maintenance to £1 10s. a week. On the husband's appeal from that order, contending that it should be discharged or that maintenance thereunder should be reduced to a nominal sum, the court found that the wife's affidavit afforded an instance not merely of lack of candour but of deliberate perjury.

SACHS, J., said that it had been contended that the way in which the wife had concealed her remarriage, both prior to the application of December, 1955, and in the affidavit on that application, came under the heading of "conduct of the parties" under s. 19 of the Matrimonial Causes Act, 1950. That conduct, of course, referred to matters which had occurred at any time up to the making of the original order for maintenance; but it had rightly been submitted that that same conduct, or conduct of the same type, could properly be taken into account as being part of "all the circumstances of the case" referred to in s. 28 (3) of the Act (which relates to variations of maintenance) and it had rightly been conceded that "conduct" in s. 19 included conduct in relation to financial matters. There was nothing in the rules or practice of the Division which required a wife unless expressly so ordered to make disclosure during the currency of a maintenance order of a change in her status or means. Similarly, no such obligation was laid upon the husband. Although that might provide a premium for some artifice, nevertheless he (his lordship) did not think that anything which the wife did before the application date could be taken to be conduct that fell within

the ambit of the relevant words in ss. 19 (2) or 28 (3), whatever criticism might be levelled at those who took advantage of the legal position to extract or evade the payment of moneys without moral justification in circumstances where frankness on their part would result in a quite different position as to those payments. But the conduct of the wife in respect of her affidavit (the effect of which had been considerably to prolong the proceedings in addition to her perjury) certainly fell within the limit of such conduct. The justice of the case would be met if the order were reduced to £1 a week as from the date of the application, 12th December, 1955, so that she would be in no better position than she would have been if the affidavit had been a proper one. His lordship further directed that the papers be sent to the Director of Public Prosecutions. Appeal allowed.

APPEARANCES: *R. J. A. Temple*, Q.C., and *J. Llewellyn* (*Young, Jones & Co.*, for *Heckford, Norton & Co.*, Letchworth); *D. Wheatley* (*How, Davey and Lewis*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 473**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time :—

Rating and Valuation Bill [H.C.] [5th March.

In Committee :—

Homicide Bill [H.C.] [7th March.
Northern Ireland (Compensation for Compulsory Purchase) Bill [H.C.] [5th March.
Shops Bill [H.L.] [5th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Agriculture Bill [H.C.] [6th March.

To make further provision for guaranteed prices and assured markets for producers of agricultural produce in the United Kingdom; to authorise the payment of grants in respect of long-term improvements of agricultural land within the United Kingdom and in respect of the costs of certain transactions concerning such land; to make fresh provision for the development of the pig industry in Great Britain (including the production, processing, manufacture and distribution of pig products); to authorise payments into the Exchequer of Northern Ireland on account of expenses incurred for the benefit of producers of agricultural produce in Northern Ireland; and for purposes connected with the matters aforesaid.

Read Second Time :—

Nurses Bill [H.L.] [6th March.
Nurses Agencies Bill [H.L.] [6th March.
Occupiers' Liability Bill [H.C.] [6th March.

Read Third Time :—

Public Health Officers (Deputies) Bill [H.C.] [8th March.

In Committee :—

House of Commons Disqualification Bill [H.C.] [6th March.

B. QUESTIONS

CRIMINAL LUNATICS ACT, 1884 (PHOTOGRAPHIC COPIES)

Mr. POWELL said that the price charged to the public for a photostat copy of this Act was 13s. for the first copy and 6s. 6d. for each subsequent copy ordered at the same time. [1st March.

INTESTATES (PERSONAL BELONGINGS)

Mr. POWELL stated that the estate of an intestate where there were no blood relations with a legal interest in the estate fell to the Crown as *bona vacantia*. The Treasury Solicitor as administrator of the estate had discretion to allow inspection of the personal belongings and papers of the deceased. [4th March.

INCOME TAX ON RENT INCREASES

Mr. THORNEYCROFT said that increases in rent under the provisions of the Rent Bill would be liable to income tax under ss. 175 and 176 of the Income Tax Act, 1952. [5th March.

IDENTIFICATION PARADES

Mr. SIMON said that the persons taking part in identification parades were selected at random, but the existing instructions provided that the persons selected should be of similar height, age and appearance to the person to be put up for identification. A suspected person's attention must, under the regulations, be drawn to his right to have his legal representative or a friend present, and to his right to object to the inclusion of any other members of the parade or to any of the arrangements. He rejected a suggestion that a photograph of the parade should be taken to enable the jury to judge as to whether there had been any unfairness in the selection thereof. [7th March.

PREVENTIVE DETENTION REPORTS

Mr. SIMON said that under the Criminal Justice Act, 1948, the Prison Commissioners had a duty to report to the court on the physical and mental condition of an accused person and his suitability for preventive detention or corrective training. He had no power to prevent publication of this matter in the court. [7th March.

STATUTORY INSTRUMENTS

Act of Sederunt (Alteration of Sheriff Court Fees), 1957. (S.I. 1957 No. 327 (S. 14).) 5d.

Administration of Justice Act, 1956 (Commencement) (Northern Ireland) Order, 1957. (S.I. 1957 No. 306 (C. 5).)

Coal Industry Nationalisation (Superannuation) Regulations, 1957. (S.I. 1957 No. 319.)

County of Stafford (Electoral Division) Order, 1957. (S.I. 1957 No. 339.) 5d.

Derwent Valley Water Order, 1956. (S.I. 1956 No. 330.) 7d.

Folkestone - Brighton - Southampton - Dorchester - Honiton Trunk Road (Titchfield Road, Fareham, Diversion) Order, 1957. (S.I. 1957 No. 324.) 5d.

Import Duties (Drawback) (No. 3) Order, 1957. (S.I. 1957 No. 334.)

Liverpool-Leeds-Hull Trunk Road (West of Gilberdyke Diversions) Order, 1957. (S.I. 1957 No. 322.) 5d.

Llanelly Corporation Water Order, 1957. (S.I. 1957 No. 332.) 5d.

Local Authorities (Charges for Dustbins) Order, 1957. (S.I. 1957 No. 304.)

London Traffic (Prescribed Routes) (Croydon) (No. 2) Regulations, 1957. (S.I. 1957 No. 311.)

London Traffic (Prescribed Routes) (Finsbury) Regulations, 1957. (S.I. 1957 No. 312.) 5d.

London Traffic (Prescribed Routes) (Holborn) (No. 2) Regulations, 1957. (S.I. 1957 No. 313.)

London Traffic (Prescribed Routes) (St. Marylebone) (No. 2) Regulations, 1957. (S.I. 1957 No. 314.)

London Traffic (Prescribed Routes) (Shoreditch) Regulations, 1957. (S.I. 1957 No. 341.) 5d.

London Traffic (Prescribed Routes) (Stepney) Regulations, 1957. (S.I. 1957 No. 315.) 5d.

London Traffic (Prescribed Routes) (Twickenham) Regulations, 1957. (S.I. 1957 No. 342.) 5d.

London Traffic (Prescribed Routes) (Westminster) (No. 3) Regulations, 1957. (S.I. 1957 No. 316.)

London Traffic (Prescribed Routes) (Westminster) (No. 4) Regulations, 1957. (S.I. 1957 No. 343.) 6d.

London Traffic (Prescribed Routes) (Woolwich) (No. 2) Regulations, 1957. (S.I. 1957 No. 344.)

London Traffic (Unilateral Waiting) (Amendment) (No. 2) Regulations, 1957. (S.I. 1957 No. 345.) 5d.

National Health Service (General Dental Services) (Scotland) Amendment Regulations, 1957. (S.I. 1957 No. 310 (S. 12).) 9d.

North West Sussex Joint Water (Amendment) Order, 1957. (S.I. 1957 No. 295.) 5d.

Police (Scotland) Amendment Regulations, 1957. (S.I. 1957 No. 336 (S. 16).)

Potatoes (Corky Scab) (Revocation) (England and Wales) Order, 1957. (S.I. 1957 No. 308.)

Silo Subsidies (England and Wales and Northern Ireland) Scheme, 1957. (S.I. 1957 No. 307.) 5d.

Silo Subsidies (Scotland) Scheme, 1957. (S.I. 1957 No. 328 (S. 15).) 5d.

Stopping up of Highways (Isle of Ely) (No. 1) Order, 1957. (S.I. 1957 No. 323.) 5d.

Stopping up of Highways (Kent) (No. 4) Order, 1957. (S.I. 1957 No. 289.) 5d.

Stopping up of Highways (London) (No. 15) Order, 1957. (S.I. 1957 No. 290.) 5d.

Stopping up of Highways (London) (No. 16) Order, 1957. (S.I. 1957 No. 296.) 5d.

Stopping up of Highways (London) (No. 18) Order, 1957. (S.I. 1957 No. 325.) 5d.

Stopping up of Highways (Middlesex) (No. 3) Order, 1957. (S.I. 1957 No. 297.) 5d.

Stopping up of Highways (Monmouthshire) (No. 1) Order, 1957 No. 291.) 5d.

Stopping up of Highways (Surrey) (No. 1) Order, 1957. (S.I. 1957 No. 299.) 5d.

Stopping up of Highways (County of Southampton) (No. 1) Order, 1957. (S.I. 1957 No. 300.) 5d.

Stopping up of Highways (West Riding of Yorkshire) (No. 7) Order, 1957. (S.I. 1957 No. 329.) 5d.

Stopping up of Highways (West Suffolk) (No. 1) Order, 1957. (S.I. 1957 No. 301.) 5d.

Swansea Corporation Water Order, 1957. (S.I. 1957 No. 333.) 5d.

Tees Valley Water Order, 1957. (S.I. 1957 No. 303.) 6d.

Wild Birds (Bramblings and Black-Tailed Godwits) Order, 1957. (S.I. 1957 No. 318.)

Wireless Telegraphy (Control of Interference from Electric Motors) Amendment (No. 1) Regulations, 1957. (S.I. 1957 No. 348.) 5d.

Wireless Telegraphy (Control of Interference from Ignition Apparatus) Amendment (No. 1) Regulations, 1957. (S.I. 1957 No. 347.) 5d.

Wireless Telegraphy (Control of Interference from Refrigerators) Amendment (No. 1) Regulations, 1957. (S.I. 1957 No. 349.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

"THE SOLICITORS' JOURNAL," 14th MARCH, 1857

On the 14th March, 1857, THE SOLICITORS' JOURNAL published the following item of House of Commons news relating to the Imprisonment for Debt Bill: "Mr. Pellatt, in moving the second reading, stated that, when he brought in this Bill last session, he quoted a return from which it appeared that there were 1,098 prisoners for debt in England; in 250 of these cases the debt and costs did not amount to £6; and some of these persons had been in prison 40 years. He found that the commitments in London alone were in 1852, 870; in 1853, 916; in 1854, 1,096; in 1855, 1,234; showing that commitments were yearly increasing. Then he found that some of the county court judges committed at the rate of 50 per cent. and some at 25, it apparently depending on the temper of the judge. If a man was fined £5 for an assault and he went to prison instead of paying, the imprisonment cancelled the debt; but that was not the case with regard to ordinary debts. After 50 years experience in business he could state that he had never received a dividend from the Insolvent Debtor's Court, and he never knew anything got by sending a man to prison. The object of the Bill was that a person who was embarrassed in circumstances . . . should not be liable to imprisonment unless he had been guilty of fraud. After some conversation the motion . . . was negatived."

NOTES AND NEWS

Honours and Appointments

Mr. JOHN W. OWEN, clerk to Rotherham County Borough and Rotherham West Riding Justices, has been appointed clerk to the Sheffield City Justices in succession to Mr. Leslie M. Pugh, subject to Home Office approval.

Miscellaneous

DEVELOPMENT PLANS

KESTEVEN DEVELOPMENT PLAN

A proposal for an addition to the above development plan was on 26th February, 1957, submitted to the Minister of Housing and Local Government. The proposal comprises a town map, programme map and written statement, and relates to land situate within the Borough of Grantham and contiguous developed areas within the West Kesteven rural district. Certified copies of the proposal, as submitted, have been deposited for public inspection at the offices of the Grantham Borough Council, Guildhall, Grantham, and West Kesteven Rural District Council, 19 Watergate, Grantham, and the County Planning Officer, County Offices, Sleaford. The copies of the proposal so deposited, together with copies of the plan, are available for inspection, free of charge, by all persons interested, at the above-mentioned places between 9 a.m. and 5 p.m. on every working day, except Saturday, when the hours will be between 9 a.m. and 12 noon. Any objection or representation with reference to the proposal may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 1st May, 1957, and any such objection or representation should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposal.

COUNTY BOROUGH OF TYNEMOUTH DEVELOPMENT PLAN, 1950

Proposals for alterations or additions to the above development plan were on 25th February, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of Tynemouth. A certified copy of the proposals, as submitted, has been deposited for public inspection at the Offices of the Borough Surveyor of the above council at 16 Northumberland Square, North Shields, in the said county borough, and is available for inspection, free of charge, by all persons interested, at the planning department of the above-mentioned office, between the hours of 9 a.m. and 5 p.m. on the usual weekdays and between the hours of 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, the Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th April, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation

may register their names and addresses with the said council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

Wills and Bequests

Mr. William Arthur Cross, solicitor, of Prescot, left £44,874 (£44,073 net).

Mr. Arthur William Hands, retired solicitor, of Scarborough, left £13,526.

Mr. G. A. Herington, solicitor, of Hastings, left £49,412 net.

OBITUARY

MR. B. T. DOUGLAS

Mr. Bernard Thomas Douglas, solicitor, of Northampton, died recently, aged 58. He was admitted in 1926.

ALDERMAN W. E. HAMLIN

Alderman William Ernest Hamlin, solicitor, of Lincoln's Inn, Surbiton and Wimbledon, died recently, aged 76. A former Mayor of Wimbledon, he was admitted in 1902.

MR. S. C. PAGE

Mr. Samuel Clifford Page, solicitor, of Ilkeston, Derbyshire, died recently at Nottingham, aged 39. He was admitted in 1940.

MR. T. P. PRICHARD

Mr. Thomas Preece Prichard, solicitor, of Cardiff, died on 6th March, aged 75. He was president of the Cardiff and District Law Society in 1944 and was admitted in 1904.

MR. J. F. B. SATCHELL

Mr. John Frederick Bridge Satchell, solicitor, of New Bond Street, London, W.1, died on 7th March. He was admitted in 1932.

SOCIETIES

SOLICITORS' BENEVOLENT ASSOCIATION

At the monthly meeting of the board of directors, held on 6th March, 1957, thirteen solicitors were admitted as members of the Association, bringing the total membership up to 8,165. Seventeen applications for relief were considered, and grants totalling £1,500 were made, £130 of which was in respect of "special" grants for holidays, clothing, etc.

All solicitors on the Roll for England and Wales are eligible to apply for membership, and application forms and general information leaflets will gladly be supplied on request to the Association's offices, Cliffords Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s.

CASES REPORTED IN VOL. 101

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THE

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CURRENT TOPICS

Wife's Costs

A POINT of law which husbands as a class do not readily understand, and appreciate even less, is that whereby the legal costs properly incurred by a wife in taking or defending matrimonial proceedings are considered to represent an expenditure on necessaries, so that ordinarily the husband must bear them. While in *Mines* v. *Mines* [1957] 1 All E.R. 667*n* WILLMER, J., did not in the circumstances of the case make any order for costs, he did cursorily examine the application to this situation of the Legal Aid Act. Since legal aid became available the husband is not in many cases the only source to which a wife can look for the means of necessary litigation, but in a proper case the husband may still be ordered to secure or pay her costs as an assisted litigant. The way the learned judge put it was that the legal aid fund, having financed the wife's case, is entitled to stand in the shoes of the wife; and he instanced for comparison the right of the National Assistance Board to claim against a husband for the cost of assistance afforded to his wife. (The latter right is, of course, statutory nowadays.) There is at first sight some novelty in this practical view of the situation. It certainly explains why, as Willmer, J., goes on to say, the fund can be in no better position than the wife, and must lose its right to reimbursement if the demerits of the wife's case are such that the court would withhold costs from her. In previous cases concerning a husband's liability for costs the wife's solicitors have been regarded as contracting with the husband through her intermediation as an agent of necessity (*Michael Abrahams, Sons & Co.* v. *Buckley* [1924] 1 K.B. 903). The difference possibly turns on the fact that there is no contract between the legal aid fund and one of its applicants.

Prison Conditions

OVERCROWDING in prisons, according to the HOME SECRETARY in his speech on 13th March on the Commons' vote of £117,000 for the salaries and expenses of the Prison Commissioners, reached its peak in 1952 when there were 6,000 prisoners sleeping three in a cell. The number recently was a little over 2,000. The number of persons in prison has risen from 20,500 in August to about 21,800 at a recent date. A reduction in the number of long sentences would contribute most to the reduction of overcrowding. Research into methods of treatment, and providing the fullest information to the courts concerning expert diagnosis, past history and personality were necessities. More progress was needed in creating remand centres. Better recruitment for prison officers with a re-assessment of their pay and their conditions of service

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